IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GET-A-GRIPP, II, INC., : CIVIL ACTION

Plaintiff,

:

v. :

HORNELL BREWING CO., INC.,

et al.,

Defendants. : NO. 00-3937

MEMORANDUM ORDER

J.M. KELLY, J. APRIL , 2001

Presently before the Court is Defendant Hornell Brewing Co., Inc. ("Hornell")'s Motion to Strike Plaintiff's Rule 41 Notice of Dismissal (Doc. No. 5). Plaintiff, Get-A-Gripp, II, Inc., has filed a Response with an attached Affidavit and Exhibits and Hornell has filed a Reply with attached Affidavits.

A plaintiff may dismiss an action "without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer. . . ." Fed. R. Civ. P. 41(a)(1). Review of the Affidavits and Exhibits indicates that the Answer was served at 6:10 P.M. on October 2, 2000 and the Notice of Dismissal was filed at 6:45 P.M. on October 2, 2000. Therefore, the Answer was served before the Notice of Dismissal was filed. Accordingly, the Notice of Dismissal has no effect and the Motion to Strike is GRANTED. The case is REOPENED.

BY THE COURT:

JAMES	McGIRR	KELLY.	J.	